

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAVID J. LOPEZ,

Plaintiff,

v.

CIV-11-00998 JB/RHS

JAMES CHAVEZ and
ANTHONY ROSALES

Defendants.

Defendants.

**DEFENDANTS' NOTICE REGARDING ATTEMPTED SERVICE OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT AND/OR DISMISSAL (DOC. 21)**

COME NOW Defendants, by and through their undersigned counsel and give notice to the Court that attempted service of the Defendants' Motion for Summary Judgment and/or Dismissal (Doc. 21) has FAILED, and the circumstances of said attempt are thus:

1. On 24 September 2012, Plaintiff filed his notice of change of address, indicating that he is no longer in the custody of the New Mexico Corrections Department (NMCD) and instead resided at: 9504 Clearmont, Albuquerque, NM 87102. See Doc. 20. Plaintiff failed to provide a post-nominal cardinal direction, as would be customary for any street address within the city of Albuquerque, New Mexico.
2. Employing the www.mapquest.com website, undersigned counsel could find no such street as 'Clearmont', using any cardinal direction, within the boundaries of the City of Albuquerque, New Mexico.
3. On 25 October 2012, undersigned counsel, on behalf of the Defendants, filed the Defendants' above-described dispositive motion (Doc. 22), with attached Exhibits (Doc. 21-1).

4. On the assumption that Plaintiff misspelled 'Clearmont', undersigned counsel caused service of the above-described dispositive pleadings to be made, via the US Postal to the following address: 9504 Claremont NE, Albuquerque, NM 87112. This street and the general, if not the exact, address, are known to undersigned counsel.

5. Undersigned counsel further avers that, in employing the website www.mapquest.com, he essayed several permutations of the cardinal direction (i.e., NE versus NW) while retaining the ZIP Code that the Plaintiff provided the Court in his Document 20, to learn that there exists no such address as: 9504 Claremont NW, Albuquerque, NM 87112.

6. The Court is respectfully directed to Exhibit No. 1, being a copy of the envelope in which the undersigned counsel caused the above-described dispositive pleading to be mailed, via the US Postal Service, to the Plaintiff.

7. Said Exhibit indicates, in pertinent part, the following: "Forward Time Exp Return To Sender". Undersigned counsel presumes that 'exp' stands for 'expired'.

8. Said Exhibit indicates, in pertinent part, what appears to be another possible mailing address for the Plaintiff, to wit: 9000 Zuni RD SE, Unit E1, Albuquerque, NM 87123-3146.

9. Employing the www.mapquest.com website, undersigned counsel has been able to determine that the address described in paragraph no. 8 above does appear to exist.

10. Undersigned counsel has confirmed that, with respect to the issue of any supervision of the Plaintiff by the NMCD, the following applies:

- a. Plaintiff was released from the custody of NMCD on: 8 August 2012.
- b. Plaintiff otherwise having completed his parole and probation requirement, Plaintiff has not been required to report to any NMCD probation and parole officer since his release of 8 August 2012.

c. As a consequence of the foregoing, Defendants cannot employ the services of the Adult Probation and Parole Division (APPD) of the NMCD to determine Plaintiff's actual home of record.

11. Defendants, having learned of the foregoing situation regarding Plaintiff's failure to notify either the Court or undersigned counsel as to his current address, undersigned counsel has caused, to be placed in the care, custody and control of the United State Postal Service, on the 16th of November 2012, a copy of the following item(s):

- a. A copy of Documents 21 and 21-1, in order to ensure service; and
- b. A copy of this pleading;
- c. A copy of the envelope returned as described in paragraph nos. 6-7 above.

WHEREFORE, Defendants respectfully request of the Court that it take Notice of the Plaintiff's failure to timely alert the Court and the Defendants of his most current address.

OFFICE OF GENERAL COUNSEL
NEW MEXICO CORRECTIONS DEPT.

/S/ Peter A. Robertson
Peter A. Robertson
Deputy General Counsel
P.O. Box 27116
Santa Fe, NM 87502-0116
(505) 827-8691

Certificate of Service

I hereby certify that on this 16th day of November 2012, the foregoing was filed electronically via CM/ECF, and the following non-CM/ECF participant was served via us mail: plaintiff pro se, David J. Lopez, 9000 Zuni RD SE, Unit E1, Albuquerque, NM 87123-3146.

/S/ Peter A. Robertson
Peter A. Robertson